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No. 85-844

In The

Supreme Court of the United States

October Term, 1985

CLYDE L. DAVIS, JR.

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UNITED AUTOMOBILE WORKERS LOCAL 970, and CLAUDE PEREIRA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondents' principal argument in opposition to the petition for a writ of certiorari is that there is no substantial division among the lower courts about the proper statute of limitations for suits under Title I of the Landrum-Griffin Act. However, on February 10, 1986, the Court of Appeals for the First Circuit issued a decision which rejects both the analysis and the result of the court of appeals in this case and of the Third Circuit in *Steelworkers Local 1397 v. Steelworkers,* 748 F.2d 180 (3d Cir. 1984), and thus creates a direct conflict among the circuits which requires resolution by this Court. *Doty v. Sewall,* No. 85-1428 (1st Cir., February 10, 1986). In addition, five more district court decisions have rejected the reasoning of the Eleventh Circuit here and reached results similar to the First Circuit in *Doty. Testa v. Gallagher,* 621 F.Supp. 476 (S.D.N.Y. 1985); *Rodonich v. Laborers,* 120 LRRM 3304 (S.D.N.Y. 1985); *Agola v. Hagner,* 120 LRRM 3279 (E.D.N.Y. 1985);

Gordon v. Winpisinger, 120 LRRM 3303 (E.D.N.Y. 1985); *Rector v. Elevator Constructors Local 10,* ____ F. Supp. ____, No. Y-85-1142 (D. Md. 1985), *pet. for leave to file interlocutory appeal denied,* No. 85-8108 (4th Cir. 1986). (Copies of the *Rector* and *Doty* opinions have been lodged with the Clerk). And another court has expressed doubt that the six-month period would apply to such cases, but did not decide the question because in any event it would not apply the ruling retroactively. *Stolz v. Carpenters Local 971,* 620 F. Supp. 396 (D. Nev. 1985).[1]

Indeed, the First Circuit is one of the courts on which respondents relied in asserting that the courts of appeals were unanimous in favor of applying section 10(b) to the Landrum-Griffin Act, Br. at 6. However, in *Doty,* Judge Coffin wrote for a unanimous court that, unlike hybrid fair representation suits which basically seek to vindicate economic rights, Title I suits are akin to civil rights cases where "the interests served by a rather short statute of limitations in *DelCostello,* stable labor-management relationships and finality in privately grieved and arbitrated settlements, are virtually, if not entirely, absent," Opin. at 15. He further noted that "the sorts of interests protected by the LMRDA make it inappropriate to limit suits under that act without a compelling reason." *Id.* at 19. Indeed, although the *Doty* court did not pass on the precise facts of this case, it criticized the decision of the court below for its "precipitate jump . . . to the conclusion that the 'national interest in labor peace' identified in *DelCostello* requires a foreshortened period within which to sue a union for mistreatment of its members." *Id.* at 23. Finally, unlike the court below, the First Circuit found it appropriate to borrow the general tort limitation period, which it deemed appropriate in light of the fact that federal civil rights claims also use that statute of limitations.

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[1] *See also Jones v. Consolidated Freightways Corp.,* 120 LRRM 3286 (10th Cir. 1985) (joining other circuits in refusing to apply *DelCostello* retroactively).

Respondents also attempt to minimize the conflict between the decision below and the Second Circuit's decision in *Monarch v. Soft Drink Workers,* 762 F.2d 228 (2d Cir. 1985), on the ground that different causes of action were involved.[2] But petitioner's point was that, like the First Circuit in *Doty,* the *Monarch* court took an entirely different approach to the borrowing of the six-month period of section 10(b) than do those courts which have applied it to union democracy cases. Indeed, four of the decisions cited above which declined to apply the six-month period to cases under Title I of the Landrum-Griffin Act (*Rodonich, Testa, Agola* and *Gordon*) did so because the courts believed that *Monarch* compelled that result.

Because there is now a clear conflict among the circuits on an important question which will continue to arise until it is resolved by this Court, certiorari should be granted.

Respectfully submitted,

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[2]The Sixth Circuit recently adopted the *Monarch* approach. *Carruthers Ready-Mix v. Cement Masons Local 520,* 121 LRRM 2298 (1985).